

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RENEE C. BAILEY, an individual,

Plaintiff,

vs.

FCA US LLC, a Delaware Limited Liability
Company, and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:21-CV-00013-JAM-JDP

STIPULATION AND ORDER –
CONFIDENTIAL DESIGNATION

ECF No. 10

IT IS HEREBY STIPULATED by and between the Parties to *Renee C. Bailey v. FCA US LLC*, by and through his respective counsel of record, that in order to facilitate the exchange of information and documents which may be subject to confidentiality limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties stipulate as follows:

1. In this Stipulation and Protective Order, the words set forth below shall have the following meanings:

a. “Proceeding” means the above-entitled proceeding, United States District Court, Northern District of California, Case No. : 2:21-CV-00013-JAM-JDP (“Court”).

b. “Court” means any judge of the Court defined above, or any other judge to which this Proceeding may be assigned, including Court staff participating in such proceedings.

1 c. “Confidential” means any information which is in the possession of a
2 Designating Party who believes in good faith that such information is entitled to
3 confidential treatment under applicable law.

4 d. “Confidential Materials” means any Documents, Testimony or Information
5 as defined below designated as “Confidential” pursuant to the provisions of this Stipulation
6 and Protective Order.

7 e. “Designating Party” means the Party that designates Materials as
8 “Confidential.”

9 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give,
10 or make available Materials, or any part thereof, or any information contained therein.

11 g. “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as those
12 terms are defined by California Evidence Code Sections 250, 255, and 260, which have
13 been produced in discovery in this Proceeding by any person, and (ii) any copies,
14 reproductions, or summaries of all or any part of the foregoing.

15 h. “Information” means the content of Documents or Testimony.

16 i. “Testimony” means all depositions, declarations or other testimony taken
17 or used in this Proceeding.

18 2. The Designating Party shall have the right to designate as “Confidential” any
19 Documents, Testimony or Information that the Designating Party in good faith believes to contain
20 non-public information that is entitled to confidential treatment under applicable law.

21 3. The entry of this Stipulation and Protective Order does not alter, waive, modify, or
22 abridge any right, privilege or protection otherwise available to any Party with respect to the
23 discovery of matters, including but not limited to any Party’s right to assert the attorney-client
24 privilege, the attorney work product doctrine, or other privileges, or any Party’s right to contest
25 any such assertion.

26 4. Any Documents, Testimony or Information to be designated as “Confidential” must
27 be clearly so designated before the Document, Testimony or Information is Disclosed or produced.
28 The parties may agree that the case name and number are to be part of the “Confidential”

1 designation. The “Confidential” designation should not obscure or interfere with the legibility of
2 the designated Information.

3 a. For Documents (apart from transcripts of depositions or other pretrial or
4 trial proceedings), the Designating Party must affix the legend “Confidential” on each page
5 of any Document containing such designated Confidential Material.

6 b. For Testimony given in depositions the Designating Party may either:

7 i. Identify on the record, before the close of the deposition, all
8 “Confidential” Testimony, by specifying all portions of the Testimony that qualify
9 as “Confidential;” or

10 ii. Designate the entirety of the Testimony at the deposition as
11 “Confidential” (before the deposition is concluded) with the right to identify more
12 specific portions of the Testimony as to which protection is sought within 30 days
13 following receipt of the deposition transcript. In circumstances where portions of
14 the deposition Testimony are designated for protection, the transcript pages
15 containing “Confidential” Information may be separately bound by the court
16 reporter, who must affix to the top of each page the legend “Confidential,” as
17 instructed by the Designating Party.

18 c. For Information produced in some form other than Documents, and for any
19 other tangible items, including, without limitation, compact discs or DVDs, the
20 Designating Party must affix in a prominent place on the exterior of the container or
21 containers in which the Information or item is stored the legend “Confidential.” If only
22 portions of the Information or item warrant protection, the Designating Party, to the extent
23 practicable, shall identify the “Confidential” portions.

24 5. The inadvertent production by any of the undersigned Parties or non-Parties to the
25 Proceedings of any Document, Testimony or Information during discovery in this Proceeding
26 without a “Confidential” designation, shall be without prejudice to any claim that such item is
27 “Confidential” and such Party shall not be held to have waived any rights by such inadvertent
28 production. In the event that any Document, Testimony or Information that is subject to a

1 “Confidential” designation is inadvertently produced without such designation, the Party that
2 inadvertently produced the document shall give written notice of such inadvertent production
3 within twenty (20) days of discovery of the inadvertent production, together with a further copy
4 of the subject Document, Testimony or Information designated as “Confidential” (the “Inadvertent
5 Production Notice”). Upon receipt of such Inadvertent Production Notice, the Party that received
6 the inadvertently produced Document, Testimony or Information shall promptly destroy the
7 inadvertently produced Document, Testimony or Information and all copies thereof, or, at the
8 expense of the producing Party, return such together with all copies of such Document, Testimony
9 or Information to counsel for the producing Party and shall retain only the “Confidential”
10 designated Materials. Should the receiving Party choose to destroy such inadvertently produced
11 Document, Testimony or Information, the receiving Party shall notify the producing Party in
12 writing of such destruction within ten (10) days of receipt of written notice of the inadvertent
13 production. This provision is not intended to apply to any inadvertent production of any
14 Information protected by attorney-client or work product privileges. In the event that this provision
15 conflicts with any applicable law regarding waiver of confidentiality through the inadvertent
16 production of Documents, Testimony or Information, such law shall govern.

17 6. In the event that counsel for a Party receiving Documents, Testimony or
18 Information in discovery designated as “Confidential” objects to such designation with respect to
19 any or all of such items, said counsel shall advise counsel for the Designating Party, in writing, of
20 such objections, the specific Documents, Testimony or Information to which each objection
21 pertains, and the specific reasons and support for such objections (the “Designation Objections”).
22 Counsel for the Designating Party shall have thirty (30) days from receipt of the written
23 Designation Objections to either (a) agree in writing to de-designate Documents, Testimony or
24 Information pursuant to any or all of the Designation Objections and/or (b) file a motion with the
25 Court seeking to uphold any or all designations on Documents, Testimony or Information
26 addressed by the Designation Objections (the “Designation Motion”). Pending a resolution of the
27 Designation Motion by the Court, any and all existing designations on the Documents, Testimony
28 or Information at issue in such Motion shall remain in place. The Designating Party shall have the

1 burden on any Designation Motion of establishing the applicability of its “Confidential”
2 designation. In the event that the Designation Objections are neither timely agreed to nor timely
3 addressed in the Designation Motion, then such Documents, Testimony or Information shall be
4 de-designated in accordance with the Designation Objection applicable to such material.

5 7. Access to and/or Disclosure of Confidential Materials designated as “Confidential”
6 shall be permitted only to the following persons:

7 a. The Court;

8 b. Attorneys of record in the Proceedings and their affiliated attorneys,
9 paralegals, clerical and secretarial staff employed by such attorneys who are actively
10 involved in the Proceedings and are not employees of any Party. In-house counsel to the
11 undersigned Parties and the paralegal, clerical and secretarial staff employed by such
12 counsel. Provided, however, that each non-lawyer given access to Confidential Materials
13 shall be advised that such Materials are being Disclosed pursuant to, and are subject to, the
14 terms of this Stipulation and Protective Order and that they may not be Disclosed other
15 than pursuant to its terms;

16 c. Those officers, directors, partners, members, employees and agents of all
17 non-designating Parties that counsel for such Parties deems necessary to aid counsel in the
18 prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure
19 of Confidential Materials to any such officer, director, partner, member, employee or agent,
20 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and
21 Protective Order to such person, shall explain that such person is bound to follow the terms
22 of such Order, and shall secure the signature of such person on a statement in the form
23 attached hereto as Exhibit A;

24 d. Court reporters in this Proceeding (whether at depositions, hearings, or any
25 other proceeding);

26 e. Any deposition, trial or hearing witness in the Proceeding who previously
27 has had access to the Confidential Materials, or who is currently or was previously an
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1 officer, director, partner, member, employee or agent of an entity that has had access to the
2 Confidential Materials;

3 f. Any deposition or non-trial hearing witness in the Proceeding who
4 previously did not have access to the Confidential Materials; provided, however, that each
5 such witness given access to Confidential Materials shall be advised that such Materials
6 are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and
7 Protective Order and that they may not be Disclosed other than pursuant to its terms;

8 g. Mock jury participants, provided, however, that prior to the Disclosure of
9 Confidential Materials to any such mock jury participant, counsel for the Party making the
10 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall
11 explain that such person is bound to follow the terms of such Order, and shall secure the
12 signature of such person on a statement in the form attached hereto as **Exhibit A**.

13 h. Outside experts or expert consultants consulted by the undersigned Parties
14 or their counsel in connection with the Proceeding, whether or not retained to testify at any
15 oral hearing; provided, however, that prior to the Disclosure of Confidential Materials to
16 any such expert or expert consultant, counsel for the Party making the Disclosure shall
17 deliver a copy of this Stipulation and Protective Order to such person, shall explain its
18 terms to such person, and shall secure the signature of such person on a statement in the
19 form attached hereto as Exhibit A. It shall be the obligation of counsel, upon learning of
20 any breach or threatened breach of this Stipulation and Protective Order by any such expert
21 or expert consultant, to promptly notify counsel for the Designating Party of such breach
22 or threatened breach; and

23 i. Any other person that the Designating Party agrees to in writing.

24 8. Confidential Materials shall be used by the persons receiving them only for the
25 purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting and/or
26 defending the Proceeding, and not for any business or other purpose whatsoever.

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1 9. Any Party to the Proceeding (or other person subject to the terms of this Stipulation
2 and Protective Order) may ask the Court, after appropriate notice to the other Parties to the
3 Proceeding, to modify or grant relief from any provision of this Stipulation and Protective Order.

4 10. Entering into, agreeing to, and/or complying with the terms of this Stipulation and
5 Protective Order shall not:

6 a. Operate as an admission by any person that any particular Document,
7 Testimony or Information marked “Confidential” contains or reflects trade secrets,
8 proprietary, confidential or competitively sensitive business, commercial, financial or
9 personal information; or

10 b. Prejudice in any way the right of any Party (or any other person subject to
11 the terms of this Stipulation and Protective Order):

12 i. To seek a determination by the Court of whether any particular
13 Confidential Material should be subject to protection as “Confidential” under the
14 terms of this Stipulation and Protective Order; or

15 ii. To seek relief from the Court on appropriate notice to all other
16 Parties to the Proceeding from any provision(s) of this Stipulation and Protective
17 Order, either generally or as to any particular Document, Material or Information.

18 11. Any Party to the Proceeding who has not executed this Stipulation and Protective
19 Order as of the time it is presented to the Court for signature may thereafter become a Party to this
20 Stipulation and Protective Order by its counsel’s signing and dating a copy thereof and filing the
21 same with the Court, and serving copies of such signed and dated copy upon the other Parties to
22 this Stipulation and Protective Order.

23 12. Any Information that may be produced by a non-Party witness in discovery in the
24 Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as
25 “Confidential” under the terms of this Stipulation and Protective Order, and any such designation
26 by a non-Party shall have the same force and effect, and create the same duties and obligations, as
27 if made by one of the undersigned Parties hereto. Any such designation shall also function as a
28 consent by such producing Party to the authority of the Court in the Proceeding to resolve and

1 conclusively determine any motion or other application made by any person or Party with respect
2 to such designation, or any other matter otherwise arising under this Stipulation and Protective
3 Order.

4 13. If any person subject to this Stipulation and Protective Order who has custody of
5 any Confidential Materials receives a subpoena or other process (“Subpoena”) from any
6 government or other person or entity demanding production of Confidential Materials, the
7 recipient of the Subpoena shall promptly give notice of the same by electronic mail transmission,
8 followed by either express mail or overnight delivery to counsel of record for the Designating
9 Party, and shall furnish such counsel with a copy of the Subpoena. Upon receipt of this notice, the
10 Designating Party may, in its sole discretion and at its own cost, move to quash or limit the
11 Subpoena, otherwise oppose production of the Confidential Materials, and/or seek to obtain
12 confidential treatment of such Confidential Materials from the subpoenaing person or entity to the
13 fullest extent available under law. The recipient of the Subpoena may not produce any Documents,
14 Testimony or Information pursuant to the Subpoena prior to the date specified for production on
15 the Subpoena.

16 14. Nothing in this Stipulation and Protective Order shall be construed to preclude
17 either Party from asserting in good faith that certain Confidential Materials require additional
18 protection. The Parties shall meet and confer to agree upon the terms of such additional protection.

19 15. If, after execution of this Stipulation and Protective Order, any Confidential
20 Materials submitted by a Designating Party under the terms of this Stipulation and Protective Order
21 is Disclosed by a non-Designating Party to any person other than in the manner authorized by this
22 Stipulation and Protective Order, the non-Designating Party responsible for the Disclosure shall
23 bring all pertinent facts relating to the Disclosure of such Confidential Materials to the immediate
24 attention of the Designating Party.

25 16. This Stipulation and Protective Order is entered into without prejudice to the right
26 of any Party to knowingly waive the applicability of this Stipulation and Protective Order to any
27 Confidential Materials designated by that Party. If the Designating Party uses Confidential
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1 Materials in a non-Confidential manner, then the Designating Party shall advise that the
2 designation no longer applies.

3 17. Where any Confidential Materials, or Information derived from Confidential
4 Materials, is included in any motion or other proceeding, including in connection with discovery
5 motions and proceedings, the same shall be separately filed under seal with the clerk of the Court
6 in an envelope marked: "CONFIDENTIAL – FILED UNDER SEAL PURSUANT TO
7 PROTECTIVE ORDER AND WITHOUT ANY FURTHER SEALING ORDER REQUIRED."

8 18. The Parties shall meet and confer regarding the procedures for use of Confidential
9 Materials at trial and shall move the Court for entry of an appropriate order.

10 19. Nothing in this Stipulation and Protective Order shall affect the admissibility into
11 evidence of Confidential Materials or abridge the rights of any person to seek judicial review or to
12 pursue other appropriate judicial action with respect to any ruling made by the Court concerning
13 the issue of the status of Protected Material.

14 20. This Stipulation and Protective Order shall continue to be binding after the
15 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding, except
16 that a Party may seek the written permission of the Designating Party or may move the Court for
17 relief from the provisions of this Stipulation and Protective Order. To the extent permitted by law,
18 the Court shall retain jurisdiction to enforce, modify, or reconsider this Stipulation and Protective
19 Order, even after the Proceeding is terminated.

20 21. Upon written request made within thirty (30) days after the settlement or other
21 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a)
22 promptly return to counsel for each Designating Party all Confidential Materials and all copies
23 thereof, (b) agree with counsel for the Designating Party upon appropriate methods and
24 certification of destruction or other disposition of such Confidential Materials, or (c) as to any
25 Documents, Testimony or other Information not addressed by sub-paragraphs (a) and (b), file a
26 motion seeking a Court order regarding proper preservation of such Materials. To the extent
27 permitted by law the Court shall retain continuing jurisdiction to review and rule upon the motion
28 referred to in sub-paragraph (c) herein.

22. Nothing in this protective order shall limit any parties right to disclose to any person, or use for any purpose, its own information and documents.

23. After this Stipulation and Protective Order has been signed by counsel for all Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the terms set forth herein with regard to any Confidential Materials that have been produced before the Court signs this Stipulation and Protective Order.

24. The Parties and all signatories to the Certification attached hereto as Exhibit A agree to be bound by this Stipulation and Protective Order pending its approval and entry by the Court. In the event that the Court modifies this Stipulation and Protective Order, or in the event that the Court enters a different Protective Order, the Parties agree to be bound by this Stipulation and Protective Order until such time as the Court may enter such a different Order. It is the Parties' intent to be bound by the terms of this Stipulation and Protective Order pending its entry so as to allow for immediate production of Confidential Materials under the terms herein.

This Stipulation and Protective Order may be executed in counterparts.

DATED: January ____, 2022

QULLL & ARROW, LLP

KEVIN Y. JACOBSON, ESQ.
Attorneys for Plaintiff **RENEE C. BAILEY**

DATED: January 13, 2022

UNIVERSAL & SHANNON, LLP

JON D. UNIVERSAL, ESQ.
JAMES P. MAYO, ESQ.
Attorneys for Defendant **FCA US LLC**

ORDER

For good cause shown, the court approves this Stipulation and Protective Order as proposed, ECF No. 10.

IT IS SO ORDERED.

Dated: January 14, 2022

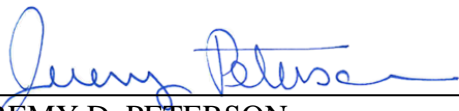

JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____[NAME],
_____[POSITION AND EMPLOYER], am
about to receive Confidential Materials supplied in connection with the Proceeding, (**United States
District Court, Eastern District of California, Case No. 2:21-CV-00013-JAM-JDP**). I certify
that I understand that the Confidential Materials are provided to me subject to the terms and
restrictions of the Stipulation and Protective Order filed in this Proceeding. I have been given a
copy of the Stipulation and Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Stipulation and Protective Order,
including any notes or other records that may be made regarding any such materials, shall not be
Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I will
not copy or use, except solely for the purposes of this Proceeding, any Confidential Materials
obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the
Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential Materials provided to
me in the Proceeding in a secure manner, and that all copies of such Materials are to remain in my
personal custody until termination of my participation in this Proceeding, whereupon the copies of
such Materials will be returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the State of California, that the
foregoing is true and correct. Executed this ____ day of ____, 202__, at _____.

DATED: _____ BY: _____
Signature

Title

Address

City, State, Zip

Telephone Number
